

APPEAL NO. 022280
FILED OCTOBER 21, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 1, 2002. While this case involved an _____, injury (the April 1994 injury), there is a companion case (Docket No. 1), Texas Workers' Compensation Commission Appeal No. 022281, decided October 21, 2002) which involves an alleged _____, injury (the September 1994 injury) involving the same parties. The issues in this case were:

1. Whether [appellant] claimant has disability resulting from the injury sustained on (the April 1994 injury)?
2. What is the extent of the compensable injury?

The hearing officer determined that the claimant's compensable injury extends to the claimant's "left shoulder and arm and right shoulder and arm" and that the claimant had disability from June 6 through June 20, 1994, and from December 19, 1994, through June 10, 1996.

The claimant, in a lengthy appeal with a supplement, disputes the hearing officer's determinations, raises matters not at issue and outside the jurisdiction of the Appeals Panel, and asserts that his disability continued through December 30, 1996. The respondent (carrier) responds, urging affirmance on any reasonable theory supported by the evidence.

DECISION

Affirmed in part and reversed and remanded in part.

The claimant, a computer programmer, is alleging a repetitive trauma injury to his left shoulder (the claimant contended that his right shoulder was injured due to the alleged injury). Although there is medical evidence that the claimant "had bilateral shoulder problems with the left worse than the right" due to using crutches for another 1993 knee injury, the carrier accepted liability for a left shoulder injury. As indicated above, the hearing officer found both a left shoulder and arm and a right shoulder and arm injury related to the (April 1994 injury) injury, although the claimant appeals that determination, asserting that the right shoulder and arm injury was due to the September 1994 injury) claim. The hearing officer's determinations are supported by the evidence and are affirmed.

We are somewhat at a loss to understand how the hearing officer determined the periods of disability, other than those were the periods that the carrier apparently accepted and for which it represented that it had paid temporary income benefits (TIBs).

The claimant's treating doctor, in a progress note dated June 6, 1994, placed the claimant on "work restriction for 2 weeks" limiting the claimant to half days with no overhead lifting greater than 10 pounds. That note supports the June 6 through June 20, 1994, disability period found by the hearing officer and not disputed by the claimant. The claimant apparently continued working, or received salary continuation until December 19, 1994, when it is undisputed that the claimant had left shoulder surgery. The evidence would support disability to May 15, 1995, when the claimant was released to return to work with some restrictions. The claimant actually attempted to return to work May 31, 1995, when he was laid off or terminated. The claimant alleges continued disability from June 1, 1995, through December 30, 1996.

The hearing officer, however, only found disability from December 19, 1994, through June 10, 1996. We are somewhat at a loss to understand why the hearing officer ended disability on June 10, 1996, when there is medical evidence that the claimant had right shoulder surgery on July 26, 1996 (we note the hearing officer found, and we are affirming, that the claimant sustained a compensable right shoulder and arm injury on [April 1994 injury]). We can only speculate that the hearing officer (and the carrier) believed that the claimant reached maximum medical improvement (MMI) by operation of law (see Section 401.011(30)(B), 104 weeks after income benefits began to accrue on that date). That may be so, however, reaching statutory MMI does not mean that disability, as defined in Section 401.011(16), has ended, rather it only means that TIBs are no longer payable pursuant to Section 408.102. To that end, the claimant's appeal that he is entitled to TIBs "for statutory maximum of 104 weeks + 1st week of disability" is also incorrect. Statutory MMI is reached at 104 weeks after income benefits begin to accrue and income benefits begin to accrue "on the eighth day after the date on which the disability began" (Section 408.082(b)) and compensation shall be computed from the date the disability begins. Section 408.082(c). Regardless of the amount of income benefits actually paid and the date of statutory MMI, we are unable to determine with any degree of certainty when disability ended and for that reason remand the case for the hearing officer to determine the period or periods of disability as defined in Section 401.011(16) that are supported by the evidence.

The claimant submits additional information, such as his tax return, for the first time with his appeal. The Appeals Panel generally will not consider documentary evidence submitted for the first time on appeal when the evidence was available at the time of the CCH, but not introduced into evidence for consideration by the hearing officer. Section 410.203(a)(1).

Regarding the claimant's appeal for the payment of impairment income benefits and medical benefits, those issues were not before the hearing officer and therefore we decline to consider them. Regarding the payment of long-term disability benefits by another insurance carrier, that evidence was pertinent only as it affected the claimant's credibility and the hearing officer is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). We find no error in the admission of this evidence, even though not pertinent to the issues, as it was relevant to and reflected on the claimant's credibility.

We affirm the hearing officer's determination on the extent of injury and we reverse the hearing officer's determination on disability and remand the case back to the hearing officer to make determinations on disability, as defined in Section 401.011(16) that are supported by the evidence.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Margaret L. Turner
Appeals Judge